UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte ALAN CHRIS BERKEMA, JEFF MORGAN,
PAT STOLTZ, and TODD FISCHER

_____

Appeal 2009-000663
Application 09/897,647
Technology Center 2600

_____

Decided: November 24, 2009

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Before KENNETH W. HAIRSTON, JOHN A. JEFFERY,
and THOMAS S. HAHN, *Administrative Patent Judges.*

HAHN, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellants invoke our review under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1-5, 7-21, and 23-35.[1] We have jurisdiction under 35 U.S.C. § 6(b). We affirm-in-part.

STATEMENT OF THE CASE

Appellants claim a method and computer device invention that allows a print client (i.e., a portable wireless device) to send a reference identifying print content to a print device. The reference includes identification for a content provider location (e.g., a Web site hosted on a Web server) where print content to be printed is stored. Print data for the referenced print content is obtained and transferred. Specified communications are conducted using a data transfer protocol (e.g., Hypertext Transfer Protocol (HTTP)), and further control communications with the print client also are effected using an argument resolution protocol (e.g., Simple Object Access Protocol (SOAP)).[2] Claims 1 and 7 are illustrative:

1. A method for serving a print by reference operation to print referenced content from a referenced location of a content provider to a print device, the method comprising steps of:

accepting, from a print client, a reference to print content targeted for printing from a content provider location indicated by the reference;

resolving the reference to determine the location indicated by the reference;

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[1] This listing of appealed claims is set out in the Office Communication mailed June 24, 2008 and is a correct statement of the status of the pending, finally rejected, and appealed claims.

[2] *See generally* Spec. 3: 9-11; 4: 2-5, 13-16; 5: 8, 9; 6: 18, 19, 27-29; 7: 16-19, 26-29; 8: 9, 10, 15-25; Figs. 1, 2.

obtaining print data from the location indicated by the reference;

transcoding the print data into a print device ready format;

allowing access to print data transcoded by said step of transcoding;

transferring, in response to a request from the print client, print data transcoded by said step of transcoding.

7. A method for serving a print by reference operation to print referenced content from a referenced location of a to a print device, the method comprising steps of:

accepting, from a print client, a reference to print content targeted for printing from a location indicated by the reference;

resolving the reference to determine the location indicated by the reference;

obtaining print data from the location indicated by the reference;

transcoding the print data into a print device ready format;

allowing access to print data transcoded by said step of transcoding;

transferring, in response to a request from the print client, print data transcoded by said step of transcoding,

initiating a control communication with the print client, wherein said step of initiating a control communication is conducted via an argument resolution protocol and said steps of accepting and transferring are conducted via a data transfer protocol.[3]

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[3] The Final Action, mailed Oct. 4, 2005, at ¶ 1 reports claim 7 as being "objected to because of the following informalities: 'content provider' appears to be missing from claim 7 line 2." Appellants' Brief, filed Apr. 11, 2006, at page. 3, n. 1, acknowledges that the words "of a" at line 2 are "incorrectly included" and should be deleted. This admission is not acknowledged in the Examiner's Answer mailed Aug. 27, 2007, nor is the

The Examiner relies on the following prior art references to show unpatentability:[4]

Reece	US 5,915,214	June 22, 1999
Gase	US 6,184,996 B1	Feb. 6, 2001
Petteruti	US 6,379,058 B1	Apr. 30, 2002
Holtzman	US 6,400,272 B1	June 4, 2002
Srinivasan	US 6,452,689 B1	Sep. 17, 2002
Hull	US 6,772,338 B1	Aug. 3, 2004
Iwata[5]	US 6,778,289 B1	Aug. 17, 2004
Olkkonen	US 6,842,460 B1	Jan. 11, 2005
Eldridge	EP 0 893 760 A2	Jan. 27, 1999

Don Box et al., *Simple Object Access Protocol (SOAP) 1.1*, W3C Note 08 May 2000, (http://www.w3.org/TR/2000/NOTE-SOAP-20000508). ("SOAP").

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objection listed or referenced. Accordingly, for purposes of this decision, we deem from the record that Appellants have admitted that inclusion of the words "of a" at line 2 of claim 7 is an informality without meaning.

[4] Effective filing dates for these documents precede Appellants' earliest effective filing date and are not at issue.

[5] In the "Grounds of Rejection" section of the Examiner's Answer, appealed claim 11 is specified as rejected under § 103(a) as unpatentable over Eldridge, Iwata, and Hull. Reasoning for reliance on these references, including Iwata, is set out on pages 8 and 9. The Iwata patent, however, is not listed in the "Evidence Relied Upon" section of the Answer as is directed in MPEP § 1207.02. For purposes of this decision, we deem the absence of Iwata from the "Evidence Relied Upon" section to be harmless error.

1. The Examiner rejected claims 1-4 under 35 U.S.C. § 102(b) as being anticipated by Eldridge. (Ans. 3, 4).

2. The Examiner rejected claim 5 under 35 U.S.C. § 103(a) as being unpatentable over Eldridge. (Ans. 5).

3. The Examiner rejected claims 7 and 8 under 35 U.S.C. § 103(a) as being unpatentable over Eldridge, Petteruti, SOAP, and Gase. (Ans. 5-7).

4. The Examiner rejected claim 9 under 35 U.S.C. § 103(a) as being unpatentable over Eldridge and Holtzman. (Ans. 7).

5. The Examiner rejected claim 10 under 35 U.S.C. § 103(a) as being unpatentable over Eldridge, Holtzman, and Hull. (Ans. 8).

6. The Examiner rejected claim 11 under 35 U.S.C. § 103(a) as being unpatentable over Eldridge, Iwata, and Hull. (Ans. 8, 9).

7. The Examiner rejected claims 12 and 13 under 35 U.S.C. § 103(a) as being unpatentable over Eldridge and Srinivasan. (Ans. 10).

8. The Examiner rejected claims 14, 16, 23-29, 32, and 34-35 under 35 U.S.C. § 103(a) as being unpatentable over the rejections for claims 1-13. (Ans. 11).

9. The Examiner rejected claim 15 under 35 U.S.C. § 103(a) as being unpatentable over Eldridge. (Ans. 11).

10. The Examiner rejected claims 17-19 and 21 under 35 U.S.C. § 103(a) as being unpatentable over Eldridge and Srinivasan. (Ans. 11, 12).

11. The Examiner rejected claim 20 under 35 U.S.C. § 103(a) as being unpatentable over Eldridge, Srinivasan, and Olkkonen. (Ans. 13).

12. The Examiner rejected claims 30 and 31 under 35 U.S.C. § 103(a) as being unpatentable over Eldridge, Petteruti, SOAP, and Gase. (Ans. 13).

13. The Examiner rejected claim 33 under 35 U.S.C. § 103(a) as being unpatentable over Eldridge, Hull, and Reece. (Ans. 14).

Rather than repeat the arguments of Appellants or of the Examiner, we refer to the Brief and the Answer[6] for their respective details. In this decision, we have considered only those arguments actually made by Appellants. Arguments that Appellants could have made but did not make in the Brief have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

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[6] We refer throughout this opinion to (1) the Appeal Brief filed Apr. 11, 2006 and (2) the Examiner's Answer mailed Aug. 27, 2007.

Appellants' Arguments

Anticipation

Appellants group claims 1-4, and separately argue independent claim 1 (Br. 5-10). Accordingly, we select claim 1 as representative. *See* 37 C.F.R. § 41.37(c)(1)(vii). Appellants assert that claim 1, which recites "print content," is not limited to providing access to user's documents, and that Eldridge "is concerned only with providing access to a user's documents" (Br. 7) (citations omitted). Further, Appellants assert that the "content provider location" as recited in claim 1 "is not a server that stores a user's own documents, as do Eldridge's document servers" (Br. 8) (citation omitted).

Obviousness

Appellants group and separately argue claims 7 and 8. (Br. 10-16). In arguing for independent claim 7, Appellants' reference that the claim recites all of "'initiating a control communication . . . conducted via an argument resolution protocol[,] and . . . accepting [a reference] and transferring [print data] . . . conducted via a data transfer protocol.'" (Br. 10, 11). Then Appellants contend that "the separate control and data communications, defined in claim 7, are unaccounted for in the Examiner's rejection." (Br. 11).

ISSUES

(1) Under § 102(b), have Appellants shown the Examiner erred in rejecting claim 1 by finding Eldridge expressly or inherently teaches:

(a) "print content" as recited in claim 1; and

(b) a "content provider location" as recited in claim 1?

(2) Under § 103(a), have Appellants shown that the Examiner erred in rejecting claim 7 by finding the combination of Eldridge, Petteruti, SOAP, and Gase teaching or suggesting separate communications using different protocols?

FINDINGS OF FACT

The record supports the following Findings of Fact (FF) by a preponderance of the evidence:

Present Application

1. The application Specification discloses that a "content provider" is "typically a web site," and that a received reference is resolved "to determine the location indicated by the reference, typically a content provider 18 accessible by a Universal Resource [L]ocator" (Spec. 6:18, 19; 7:16-18; Fig. 1).

2. The application Specification further discloses that a control channel separate from a data channel may be initiated. Communications over the disclosed separate channels are conducted using different protocols. The control channel communicates arguments and responses, and the data channel communicates print service data (Spec. 8:15-25; Fig. 3).

Eldridge

3. Eldridge discloses a system and method for transmitting tokens, which include context information (e.g., URL document requests), that are used to conduct search requests so that electronic stored document data is found and then is sent from a repository (e.g., a "remote file

server 52" or "workstation 50") for display or printing (Abstract; Eldridge, col. 1, ll. 3-8; col. 12, l. 47 – col. 13, l. 1).

4. Eldridge further discloses using document references (i.e., World Wide Web URLs) that are associated with documents stored at web sites so that the documents "are distributed from one person to another by transmission of document URLs, and a document is sent to a printer by beaming that document's URL to an IR transceiver associated with that printer" (col. 1, ll. 26-35; col. 12, l. 47-col. 13, l. 4).

Petteruti

5. Petteruti discloses a system and method for providing radio frequency (RF) signal communication between a host terminal or computer system ("host") and a portable printer. The host has a RF communication interface and is programmed to send and receive data using an interface to a portable printer (Abstract).

6. The Petteruti RF communications link can either be initiated by a user first selecting a link option on a host terminal using a keypad, or the user can initiate the link using a portable printer to provide RF communications between the host and portable printer (col. 5, l. 45 – col. 6, l. 48; Figs. 4 and 4A).

PRINCIPLES OF LAW

During patent application examination, a claim is given its broadest reasonable construction "in light of the specification as it would be interpreted by one of ordinary skill in the art." *In re Am. Acad. Of Sci. Tech.*

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Ctr., 367 F.3d 1359, 1364 (Fed. Cir. 2004). "[T]he words of a claim 'are generally given their ordinary and customary meaning.'" *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (internal citations omitted). The "ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application." *Id.* at 1313. Limitations from examples given in the specification, however, are not read into claims. *In re Zletz,* 893 F.2d 319, 321-22 (Fed. Cir. 1989).

Anticipation

The inquiry as to whether a reference anticipates a claim must focus on what subject matter is encompassed by the claim and what subject matter is described by the reference. As set forth by the court in *Kalman v. Kimberly-Clark Corp.,* 713 F.2d 760, 772 (Fed. Cir. 1983), it is only necessary for the claims to "'read on' something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or 'fully met' by it."

Obviousness

An Examiner, in rejecting claims under 35 U.S.C. § 103, must establish a factual basis to support a legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). The Supreme Court has further explained that an obviousness rejection must be based on:

> "'some articulated reasoning with some rational underpinning
> to support the legal conclusion of obviousness'. . . . [H]owever,

the analysis need not seek out precise teachings directed to the
specific subject matter of the challenged claim, for a court can
take account of the inferences and creative steps that a person
of ordinary skill in the art would employ."

KSR Int'l Co. v. Teleflex, Inc., 550 U.S. 398, 418 (2007) (quoting *In re
Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

ANALYSIS

Anticipation

We do not find error in the Examiner's rejection under § 102(b) of
claims 1-4 as being anticipated by Eldridge.

The Examiner finds, as do we, that Eldridge teaches a method for
using a transmitted token, which contains an URL, to locate and send
document data from an identified storage location to a printer (Ans. 3, 4; FF
3).

Appellants argue that:

Eldridge has limited application and is concerned only with providing
access to a user's documents (C5, L9-14, L24-30; see also C10, L1-7:
"In this way it is only the token that is transmitted from the personal
portable device via wireless means and then . . . communications are
uses to move the actual document data . . . to the end device"),
whether they may have been previously created or received by email
or otherwise. Eldridge does not provide a solution for printing by
reference content of a content provider with use of a web based or
local print service.

(Br. 7.) We are not persuaded by such arguments.

First, we find Eldridge discloses a system and method for transmitting
tokens, which include context information (e.g., URL document requests),

that are used to conduct search requests so that electronic stored document data is found and sent from a repository (e.g., a "remote file server 52" or "workstation 50") for display or printing (FF 3). Second, we further find, as does the Examiner, that Eldridge "teaches documents are distributed from one person to another. In other words, Eldridge teaches the document that is being stored and sent to a user by the file server . . . could be a document from another person (not [a] document from the same user)" (Ans. 15; FF 4). Additionally, representative claim 1 recites no limitation excluding coverage of methods directed to user documents, nor to methods directed to a document class that may include user documents. Thus, in contradiction to Appellants' assertions, we find Eldridge teaching a method for accessing a document class that is broader than just user documents, and even if Eldridge were limited to accessing only user documents, representative claim 1 covers a method broad enough to read on accessing user documents.

Appellants further argue that claim 1 was amended "to specifically and clearly define that the print content is from a content provider location, as opposed to merely any location that stores documents" (Br. 8). More specifically, Appellants assert that the "specification's use of the term and the ordinary meaning of the term make clear that a content provider is not a server that stores a user's own documents, as do Eldridge's document servers (see, e.g., Eldridge, C12, L47-54)" (id.). As support for these assertions, Appellants cite to disclosures from their application that "the content provider 18 is 'typically a website over the internet.' P5, L9; see also FIG. 1" (Br. 9). Again, turning to representative claim 1, we do not find any recited limitation restricting a "content provider" to being only a "website over the internet." Further, specification disclosed embodiment limitations

are not to be read into claims. *Zletz*, 893 F.2d at 321-22. Finally, we find, as does the Examiner, that Eldridge teaches a remote file server 52 at column 12, lines 54-55, that stores and serves documents as an Internet-based Website (Ans. 15; FF 3, 4).

> Appellants additionally submit that:

> A web search for "content provider" on Yahoo search engine, for example (referred to in Amendment B, P8, L25 - P9, L2, see also Evidentiary Appendix A herewith), provides examples of financial content providers, stock market providers, scholastic information content providers, etc. Further, a search on the USPTO's patent database for TTL\ "content provider" (see Evidentiary Appendix B herewith) reveals ten patents that use the word content provider in the title, and these patents use "content provider" in a manner generally consistent with the use by Applicants.

(Br. 9.) Appellants only reference these submissions and assert generalized conclusions without citation to one submitted document or listed patent. Consequently, Appellants have not provided any reasonably specific argument. Furthermore, regarding the Evidentiary Appendix B listed patents, Appellants are precluded from asserting arguments based on these references because of having failed to provide any statement setting forth where this submission may have been entered in the record by the Examiner as required by 37 C.F.R. § 41.37(c)(1)(ix).

For these reasons, we conclude, as does the Examiner, that the representative claim 1 recited method is anticipated by Eldridge. We will sustain the Examiner's rejection under § 102(b) of claim 1, and also will sustain the rejection of dependent claims 2-4 that fall for similar reasons.

Obviousness

Claim 5

Dependent claim 5 stands rejected under § 103(a) as unpatentable over Eldridge. Appellants exclusively assert by reference the same arguments made regarding independent claim 1 (Br. 10). For the reasons stated *supra* for claim 1, we will sustain the Examiner's rejection of claim 5. *In re Nielson,* 816 F.2d 1567, 1572 (Fed. Cir. 1987) (Rejections of dependent claims stand or fall with their independent claim if not challenged with any reasonable specificity.).

Claim 7

Based on the record before us, we are persuaded the Examiner erred in rejecting independent claim 7 over Eldridge, Petteruti, SOAP, and Gase.

Claim 7 recites a method of "initiating a control communication with the print client, wherein said step of initiating a control communication is conducted via an argument resolution protocol and said steps of accepting and transferring are conducted via a data transfer protocol." The Examiner acknowledges that Eldridge "does not teach the method . . . of initiating a control communication with the print client" (Ans. 5), and finds Petteruti "teach[ing] a step of initiating a control communication with the print client (column 6:lines 24-25)" (Ans. 6).

Appellants assert that "the separate control and data communications, defined in claim 7, are unaccounted for in the Examiner's rejection" (Br. 11). As to "separate control and data communications," we find that claim 7 recites a method covering communication links that use both an "argument

resolution protocol" and a "data transfer protocol." Further, we find Appellants application disclosing a control channel that is *separate* from a data channel, and that these channels use different communications protocols (FF 2).

With respect to a combination of Eldridge and Petteruti teaching or suggesting initiation of a control communication link, the Examiner indicates that it would have been obvious "to have used the control communication initiated with the print client as taught by Petteruti et al. in the method of Eldridge et al. because it provides a method for additional functionality wherein the portable device is not the only device that initiates control communication" (Ans. 6). This is reasoning for using a Petteruti print client to initiate a communications link, but does not address how Eldridge could be modified for initiation of separate communications links.

We find Petteruti discloses establishing a communications link between a host and a portable printer that either can be initiated from the host, e.g., computer, terminal using a keypad, or that can be initiated from the portable printer (FF 6). The Examiner also finds Petteruti teaches initiation of communications with a printer (Ans. 6), but the Examiner is silent as to Eldridge, Petteruti or other cited references teaching or suggesting alone or in combination initiation of separate communications links. The Examiner has not rebutted nor provided evidence contradicting Appellants' assertion that the claim 7 covered separate communications are unaccounted for in the rejection.

For the foregoing reasons, Appellants have persuaded us of error in the Examiner's rejection of independent claim 7. Therefore, we will not sustain the Examiner's rejection of that claim.

Claim 8

Claim 8 depends from independent claim 7 and stands rejected under § 103(a) as unpatentable over Eldridge, Petteruti, SOAP, and Gase. Appellants assert, *inter alia*, the arguments made regarding independent claim 7 (Br. 15, 16). For reasons stated *supra* for claim 7, we will not sustain the obviousness rejection of claim 8.

Claim 9

Claim 9 depends from claim 1, and stands rejected under § 103(a) as unpatentable over Eldridge and Holtzman. Appellants exclusively assert by reference the same arguments made regarding independent claim 1 (Br. 16). For the reasons stated *supra* for claim 1, we will sustain the Examiner's rejection of claim 9. *Nielson,* 816 F.2d at 1572.

Claim 10

Claim 10 depends from base independent claim 1, and stands rejected under § 103(a) as unpatentable over Eldridge, Holtzman, and Hull. Appellants exclusively assert by reference the same arguments made regarding claim 1 (Br. 17). For the reasons stated *supra* for claim 1, we will sustain the Examiner's rejection of claim 10. *Nielson,* 816 F.2d at 1572.

Claim 11

Claim 11 depends from claim 1, and stands rejected under § 103(a) as unpatentable over Eldridge, Iwata, and Hull. Appellants exclusively assert by reference the same arguments made regarding independent claim 1 (Br.

17). For the reasons stated *supra* for claim 1, we will sustain the Examiner's rejection of claim 11. *Nielson,* 816 F.2d at 1572.

Claims 12 and 13

Claims 12 and 13 depend from claim 1, and stand rejected under § 103(a) as unpatentable over Eldridge and Srinivasan. Appellants exclusively assert by reference the same arguments made regarding independent claim 1 for the collectively argued claims 12 and 13 (Br. 17). For the reasons stated *supra* for claim 1, we will sustain the Examiner's rejection of claims 12 and 13. *Nielson,* 816 F.2d at 1572.

Claims 14, 16, 23-26, 34, and 35

Claims 16, 23-26, 34, and 35 depend from base independent claim 14, and stand rejected under § 103(a) as unpatentable based on the rejections of claims 1-13. Appellants assert by reference the same arguments made regarding claim 1 for these collectively argued claims, including claim 14 (Br. 18). For the reasons stated *supra* for claim 1, we will sustain the Examiner's rejection of independent claim 14, and also will sustain the rejection of dependent claims 16, 23-26, 34, and 35 that fall for similar reasons. *Nielson,* 816 F.2d at 1572.

Claims 27-29

Claims 27-29 depend from claim 26, which depends from base independent claim 14, and stand rejected under § 103(a) as unpatentable

based on the rejections of claims 1-13. Accordingly, claims 27-29 incorporate by reference all limitations of claims 14 and 26. 35 U.S.C. § 112, 4th ¶. Among these limitations is a claim 26 recitation that a print client receive a reference over a control communication channel and the print client "opens a separate data channel for data exchange." Appellants assert, *inter alia*, by reference the arguments made regarding claim 7 (Br. 18). In view of claims 27-29 covering a control communication channel and a *separate* data channel, we, for reasons stated *supra* for claim 7, will not sustain the obviousness rejection of these claims.

Claim 15

Claim 15 depends from claim 14, and stands rejected under § 103(a) as unpatentable over Eldridge. Appellants exclusively assert by reference the same arguments made regarding claim 1 (Br. 18). For the reasons stated *supra* for claim 1, we will sustain the Examiner's rejection of claim 15. *Nielson,* 816 F.2d at 1572.

Claims 17-19 and 21

Claims 17-19 and 21 depend from base independent claim 14, and stand rejected under § 103(a) as unpatentable over Eldridge and Srinivasan. Appellants exclusively assert by reference the same arguments made regarding claim 1 (Br. 19). For the reasons stated *supra* for claim 1, we will sustain the Examiner's rejection of claims 17-19 and 21. *Nielson,* 816 F.2d at 1572.

Claim 20

Claim 20 depends indirectly from base independent claim 14, and stands rejected under § 103(a) as unpatentable over Eldridge, Srinivasan, and Olkkonen. Appellants exclusively assert by reference the same arguments made regarding claim 1 (Br. 19). For the reasons stated *supra* for claim 1, we will sustain the Examiner's rejection of claim 20. *Nielson,* 816 F.2d at 1572.

Claims 30-32

Claims 30-32 depend indirectly from claim 26, which depends from base independent claim 14. Accordingly, claims 30-32 incorporate by reference all limitations of claims 14 and 26. 35 U.S.C. § 112, 4th ¶. Among these limitations is the claim 26 recitation that a print client receive a reference over a control communication channel and the print client "opens a separate data channel for data exchange." Appellants assert, *inter alia*, by reference the arguments made regarding claim 7 (Br. 19). In view of claims 30-32 covering a control communication channel and a separate data channel, we, for reasons stated *supra* for claim 7, will not sustain the obviousness rejection of these claims.

Claim 33

Claim 33 depends from independent claim 14, and stands rejected under § 103(a) as unpatentable over Eldridge, Hull, and Reece. Appellants exclusively assert by reference the same arguments made regarding claim

14, which arguments exclusively reference those made for claim 1 (Br. 20). For the reasons stated *supra* for claim 1, we will sustain the Examiner's rejection of claim 33. *Nielson,* 816 F.2d at 1572.

CONCLUSIONS

Under § 102, Appellants have not shown that the Examiner erred in rejecting claims 1-4.

Under § 103, Appellants have not shown that the Examiner erred in rejecting claims 5, 9-21, 23-26, and 33-35.

Appellants, however, have shown that the Examiner erred in rejecting claims 7, 8, and 27-32 under § 103.

DECISION

The Examiner's decision rejecting claims 1-5, 7-21, and 23-35 is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

<u>AFFIRMED-IN-PART</u>

KIS

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